

(b) The PA shall comply with the following procedures in all cases prior to discharge, except when the consumer resident cannot be located, or, despite the PA's effort to comply, the consumer resident is unwilling to participate:

1. The PA's assigned clinical staff shall fully inform the consumer resident of and discuss with the consumer resident the factual and clinical basis for discharge, and, if the consumer resident does not agree, approve the discharge;

2. The PA shall offer to utilize the consumer resident Complaint/Agency Ombuds Procedure, N.J.A.C. 10:37-4, to attempt to resolve any problems; and

3. The PA's assigned clinical staff shall formulate a written discharge plan and document all efforts to obtain appropriate alternate living arrangements and appropriate alternate treatment modalities.

(c) If, after the procedures set forth in (b)1 through 3 above are completed, the consumer resident disagrees with the PA decision to discharge, the PA may discharge and remove the consumer resident from the residence only after complying with the following procedures and obtaining the approval of the Division's review officer as set forth below:

1. If the consumer resident has declined to utilize the consumer resident Complaint/Agency Ombuds Procedure, the PA shall submit its decision for review by the chief executive officer of the PA;

2. If the chief executive officer upholds the basis for the discharge and the consumer resident disagrees, the PA shall deliver to the consumer resident a written notice of intent to discharge the consumer resident from the residence, and read and explain such notice to the consumer resident in the same language utilized on admission to explain documents as set forth at N.J.A.C. 10:37A-9.3(c); and

3. The PA shall then schedule a meeting for administrative review by the Division as set forth at (d) below on a date at least 10 days after the date upon which it delivered, read and explained the notice referred to in (c)2 above, if an alternate residence is available. If an alternate residence is not available, the meeting shall be scheduled at least 20 days thereafter.

(d) The administrative review referred to in (c)3 above shall be conducted by the designee of the Director of the Division, and such designee shall be an employee of the Division. The reviewing officer shall schedule at least one meeting between the PA representatives, the consumer resident and the reviewing officer, at which meeting or meetings the reviewing officer shall insure the following:

1. That the PA has engaged in all of the procedural steps required by this chapter, prior to the meeting date;

2. That the consumer resident has had fair notice of the factual and clinical basis for the PA's decision to discharge;

3. That the consumer resident is given a reasonable time within which to obtain the services of an advocate or attorney, if the consumer resident so desires;

4. That the consumer resident is present during all meetings conducted by the reviewing officer, unless the consumer resident waives his or her right to be present;

5. That the consumer resident is assisted and/or represented by any available individual of his or her choice during the meeting, if the consumer resident so desires;

6. That the consumer resident has a full opportunity to respond to everything stated during the meeting; and

7. That the consumer resident has a full opportunity to present any relevant documents, objects or statements of third persons. The officer must permit such persons to make such statements in person during the meeting, and may accept such statements in writing. The officer may base his or her decision in part upon written statements, if at least one person attends the meeting who has personal knowledge of the relevant facts.

(e) During or after the meeting or meetings described in (d) above, the reviewing officer shall make the following findings:

1. That the consumer resident has or has not been accorded the safeguards listed in (d) above;

2. That the factual basis for the PA's decision to discharge is or is not true, based upon a preponderance of the credible evidence; and

3. That one or more of the conditions justifying discharge, as specified in N.J.A.C. 10:37A-9.5, does or does not in fact exist at the time of the final review meeting, or that it is reasonable to believe that, if such condition does not exist at the time of the final review meeting, the condition will recur immediately upon disapproval of discharge.

(f) If the reviewing officer makes all of the findings set forth at (e) above in the affirmative, such officer may, in his or her discretion, approve the discharge and removal of the consumer resident from the residence in question, and set a reasonable date and reasonable conditions, if any, for discharge. If the reviewing officer does not approve such discharge, he or she shall make such recommendation as he or she may consider fair and appropriate.

(g) By letter, the reviewing officer shall notify the PA, the consumer resident and the consumer resident's representative, if any, of the officer's findings and decision. The PA staff shall read and explain such letter to the consumer resident in the same language utilized at admission to

explain documents as set forth above at N.J.A.C. 10:37A-9.3(c).

(h) The decision of the reviewing officer shall be the final decision of the Department; the PA's noncompliance with such decision shall be grounds for revocation of licensure or other administrative sanction.

(i) If the reviewing officer approves the discharge, the PA may discharge and peaceably remove the consumer resident from the residence as directed by the reviewing officer, and in any event no sooner than seven days after the consumer resident receives the reviewing officer's written decision. Any such discharge must be to an appropriate form of living arrangement.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (a), substituted "a group home, supervised apartment, or a family care home" for "the residence" preceding "only after"; substituted references to consumer resident for references to client throughout.

10:37A-9.7 Miscellaneous provisions regarding the discharge of consumer residents from group homes, supervised apartments and family care homes

(a) A PA shall not discharge a consumer resident from a group home, supervised apartment, or a family care home as a retaliation or reprisal for such consumer resident's attempt to assert his or her rights, desires or needs.

(b) Whenever a consumer resident's behavior presents a substantial, immediate and emergent threat to the physical safety of others, or to the emotional or psychological health of other consumer residents, the PA may remove the consumer resident immediately and temporarily, if necessary, and may prevent the consumer resident from returning until the immediate threat has been obviated. The PA may not discharge such consumer resident, however, unless a condition for discharge listed above at N.J.A.C. 10:37A-9.5 exists, and unless the PA follows all procedures for discharge set forth in this chapter. If the PA prevents the consumer resident's return for more than 24 hours, it must comply with the following procedures:

1. The proposed decision shall be submitted to the chief executive officer of the PA for his or her approval;

2. If the chief executive officer approves, the PA shall schedule an administrative review of such exclusion within the next 48 hours, before a reviewing officer appointed as set forth in N.J.A.C. 10:37A-9.6(d), and such review shall determine the propriety of the continuation of such exclusion. Such review shall be conducted pursuant to the procedures set forth at N.J.A.C. 10:37A-9.6(d), to the extent that such procedures are feasible and applicable. The reviewing officer shall make such order as he or she shall consider fair and appropriate.

(c) The PA shall maintain the consumer resident's residential placement during brief hospitalizations and temporary absences for up to 30 days from the date of such consumer resident's admission to a hospital, or from the date of such consumer resident's leaving the residence.

(d) The PA must exercise reasonable care to safeguard the consumer resident's property for a reasonable period of time after the consumer resident is discharged, and in any event for at least 30 days.

(e) A shelter for the homeless shall not be considered an appropriate alternative residence as required pursuant to this subchapter.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (a), inserted "from a group home, supervised apartment, or a family care home" preceding "as a retaliation"; substituted references to consumer resident for references to client throughout.

10:37A-9.8 Conditions for termination of supportive housing services

(a) The supportive housing services used by a consumer resident may be terminated only if a consumer resident:

1. Has achieved the service plan goals and needs no further treatment;
2. Is out of contact with the supportive housing service provider for a continuous period of 90 days, and the provider has attempted to engage the consumer resident through repeated telephone calls, correspondence and home visits which shall be documented in the clinical record;
3. Is refusing services;
4. Moves into another residential program;
5. Leaves the geographic area served by the PA and services are no longer accessible. If the consumer resident moves to another location with a supportive housing program, the PA shall provide that program's name and telephone number; or
6. Repeatedly violates a written rule governing consumer resident conduct, which is reasonable both in itself and its application, after the PA delivers to him or her a written notice to cease violating such rule. No such rule shall be the basis for terminating supportive housing services unless it is reflected in a consumer resident service agreement.

(b) Termination of supportive housing services shall not directly affect the consumer's rights to enjoy the owned or leased premises as contained in real estate/lease agreements. Continued occupancy, and eviction proceedings if appropriate, shall be in conformance with New Jersey landlord-tenant law.

New Rule, R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

APPENDIX A

Each consumer resident in a licensed group home, supervised apartment and family care home is to be provided with a copy of the following consumer rights regarding discharge and exclusion from the facility (with the appropriate names, addresses and phone numbers of the individuals listed on page two of this appendix):

STATEMENT OF CONSUMER RESIDENT RIGHTS REGARDING DISCHARGE AND EXCLUSION FROM A PA OWNED, LEASED OR CONTRACTED RESIDENCE

As a consumer resident in a Community Residence licensed by the New Jersey Division of Mental Health Services, you are protected from being discharged or excluded from the PA-owned, leased or contracted residence against your will and without sufficient cause as outlined in the service agreement and/or lease. Also, specific procedures must be followed by the Agency before any discharge or exclusion can occur.

The reasons for discharge or exclusion and the procedures to be followed are as follows:

REASONS FOR DISCHARGE:

To be discharged or excluded from the group home, PA apartment or family care residence, one of the following conditions must occur:

1. You have received the maximum clinical benefit offered by the program and another place (not a hospital or shelter) is available for you to live in, and discharge would be in your clinical best interests.
2. You behave in a manner which substantially threatens the physical safety or emotional or psychological health of others.
3. You repeatedly break a written rule of the residence after being given a written warning to stop.
4. You behave in a manner which is inappropriate and which breaks the law or causes the residence to violate its lease or other agreements.
5. You leave the residence for 30 days without informing staff that you will return soon.
6. You refuse to participate in many of the services listed in your previously agreed upon treatment plan, have not offered a reasonable alternative plan of daily activities, and there is another place available for you to live, other than a hospital.

PROCEDURES FOR DISCHARGE OR EXCLUSION:

A. The following procedures must be followed in the case of all discharges or exclusions from a Community Residence:

1. Your assigned clinical staff must fully explain the reasons.
2. If you wish, you must be offered the opportunity to speak with the Agency Ombudsperson and to follow the consumer resident Complaint Procedure. If you wish more information about this procedure, the Agency which operates this Community Residence will give you the full details.
3. In the case of discharge, clinical staff must make a discharge plan for you and attempt to locate another place for you to live and other appropriate treatment services.

B. If you disagree with the decision to discharge or exclude you, the following procedures must be followed:

1. The Agency's Chief Executive Officer must review the decision and approve it.
2. A representative of the Division of Mental Health Services must review the decision and you must be given the opportunity to meet with that representative.
 - You will receive at least ten (10) days notice before a meeting is scheduled.
 - You must be given the opportunity to bring a lawyer or another person to the meeting if you desire and to have other persons present to tell what they know.
 - You must be given the opportunity to say or show anything that helps the Division representative understand why you disagree with the plan to discharge or exclude you. You must also be read any letters or written statements made by others and be allowed to respond to them.
3. The Division's representative may make any decision he or she reasonably considers to be fair and send the decision to you in writing. If the decision is made to approve the discharge or exclusion, you must be given at least seven (7) days from the date you receive the letter to move out of the residence. If the decision does not approve the discharge or exclusion, the Agency which operates this Community Residence will comply with the terms of the decision or otherwise be subject to administrative sanction.

OTHER PROCEDURES:

1. In the event you are hospitalized or leave the residence temporarily, your place in the residence must be held for you for thirty (30) days.
2. In the event you are discharged or excluded and you have not taken all of your personal property with you, the Agency must safeguard that property for a reasonable period of time, at least thirty (30) days.
3. In the event of an emergency where your behavior endangers others and there is no other effective way of dealing with the situation, you may be removed from the residence temporarily without prior review by the Division. If that occurs, you must be given the opportunity to meet within three (3) days with a representative of the Division of Mental Health Services. As much as possible, the procedures set forth above will be followed.
4. You may not be discharged or excluded from a community residence as a retaliation or reprisal for trying to state or obtain your rights or anything you may want or need.

WHERE TO CALL FOR HELP:

If you need assistance regarding your rights in a licensed Community Residence, you may call any of the following:

Agency Ombudsperson
(Name, Address and Phone Number)

County Mental Health Administrator
(Name, Address and Phone Number)

Bureau of Licensing and Inspections
Division of Mental Health Services
50 East State Street
PO Box 727
Trenton, New Jersey 08625-0727
(609) 341-3330

Community Health Law Project
185 Valley Street
South Orange, New Jersey 07079
(973) 275-1175

Legal Aid Society of Morris County
(where appropriate)
30 Schuyler Place, 2nd Floor
PO Box 900
Morristown, New Jersey 07963-0900
(973) 285-6911

Middlesex County Legal Services Corporation
(where appropriate)
78 New Street, 3rd Floor
New Brunswick, New Jersey 08901-2564
(732) 249-7600 or 324-1613

New Jersey Protection & Advocacy, Inc.
210 South Broad Street (Third Floor)
Trenton, New Jersey 08608
1-800-922-7233

This statement is a summary of your full discharge rights, which appear at N.J.A.C. 10:37A-9.4 et seq., and which shall be available at your request at the Agency. Nothing in this statement is intended to alter or interpret the provisions of N.J.A.C. 10:37A-9.4 et seq.

Amended by R.2002 d.57, effective March 4, 2002.
Sec: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).
Rewrote section.